

APPEAL NO. 021071
FILED JUNE 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 9, 2002. The hearing officer decided that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fifth and sixth quarters. The claimant appealed on sufficiency grounds, and the respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the fifth and sixth quarters. The parties stipulated that the relevant time period in question was April 14, 2000, through October 12, 2000. At the hearing, it was undisputed that the claimant had neither returned to work nor looked for work during the time period in question and that the claimant based her entitlement to SIBs for the quarters in dispute on an assertion of a total inability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer determined that the June 20, 2000, report from the Texas' Workers' Compensation Commission-appointed designated doctor indicated that the claimant had some ability to work in some capacity during the relevant qualifying periods. Whether or not there was an "other record" showing that the claimant had some ability to work was a question of fact for the hearing officer. The hearing officer's determination that there was an "other record" in evidence which demonstrated that the claimant had some ability to work during the qualifying periods in question pursuant to Rule 130.102(d)(4), and that she is therefore not entitled to SIBs for the fifth and sixth quarters is supported by sufficient evidence and it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

We note that in her appeal, the claimant asserts that the designated doctor's amended report dated December 20, 2001, in which he states that the claimant is totally disabled and unable to work in any capacity, should be given presumptive weight pursuant to Rule 130.6(i). We disagree. Rule 130.110 provides that a designated doctor's report is only given presumptive weight in a return to work dispute on or after the second anniversary of the injured employee's initial entitlement to SIBs. Because the disputed quarters are prior to the second anniversary of the claimant's initial

entitlement to SIBs, the designated doctor's report[s] is not entitled to presumptive weight.

Finally, in her appeal, the claimant asks us to address the carrier's failure to pay for certain medical treatment. As that was not a disputed issue at the hearing, we lack jurisdiction to address the matter on appeal and decline to do so.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST SIXTH STREET
AUSTIN, TEXAS 78701.**

Daniel R. Barry
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge